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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. FELIPE SPRINGFIELD, Defendant and Appellant.	B171182 (Los Angeles County Super. Ct. No. BA240868)

APPEAL from a judgment of the Superior Court of Los Angeles County, Rand S. Rubin, Judge. Affirmed.

Leonard J. Klaif, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Margaret E. Maxwell, Supervising Deputy Attorney General, and Stephanie C. Brenan, Deputy Attorney General, for Plaintiff and Respondent.

Felipe Springfield appeals from the judgment entered following his convictions by jury of robbery (Pen. Code, § 211) and petty theft with a prior conviction (Pen. Code, § 666), having suffered two prior felony convictions (Pen. Code, § 667, subd. (d)), two prior serious felony convictions (Pen. Code, § 667, subd. (a)), and five prior felony convictions for which he served separate prison terms (Pen. Code, § 667.5, subd. (b)). He was sentenced to prison for 20 years.[1]

In this case, we hold no violation of appellant's right to counsel, right to due process, or right to a fair trial resulted when the court, for a portion of the trial, allowed appellant, who was in pro per, to be tried *in absentia.*

FACTUAL SUMMARY

Viewed in accordance with the usual rules on appeal (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206), the evidence, the sufficiency of which is undisputed, established that on December 17, 2002, appellant committed the above offenses in Los Angeles County.

CONTENTION

Appellant contends that "[t]he court denied appellant his fundamental rights secured by the United States Constitution in allowing the trial to proceed in appellant's absence in view of appellant's pro per status."

DISCUSSION

1. *Pertinent Facts.*

On January 17, 2003, the court granted appellant's request to represent himself. On March 18, 2003, prior to voir dire of the jury, the court indicated that it previously had told appellant that he was not to mention to prospective jurors that the present case was a Three Strikes case, or that he was facing a possible life sentence. At one point during voir dire of prospective jurors, the court, outside the presence of the jury, stated that appellant had not conducted himself appropriately throughout the trial, he had defied court orders not to discuss jail time and sentencing with jurors, he had indicated that he

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[1] The court, pursuant to Penal Code section 1385, struck one Three Strikes law prior felony conviction and the Penal Code section 667.5, subdivision (b), enhancements.

would continue to disobey court orders, and he would continue to discuss the fact that he believed that he faced a possible sentence of 127 years to life.

The court indicated that appellant's calculation showed he had no understanding of sentencing. The court stated that appellant "has continued to talk about inappropriate matters in front of the jury, making statements like, 'God is good,' 'My life is on the line,' 'They want 127 to life,' and cheering out loud when jurors indicate that they have a problem with the Three-Strikes law. [¶] If any attorney had done these things, there certainly would be a contempt hearing and the attorney would be serving time."

The court told appellant that since appellant was telling the jury that he wanted the jury to know all the facts, and since appellant was misstating his possible sentence, if appellant told the jury one more time about sentencing, the court would tell the jury what had in fact occurred, namely, that the People had offered a plea bargain in which appellant would have received only an eight-year prison sentence. Appellant told the court that he was going to "keep it up." The court later commented that appellant was trying to cause a problem in the trial.

The court later warned appellant that if he continued to interrupt the court and talk about irrelevant things, appellant would be placed in lockup, would monitor the courtroom proceedings via a speaker in the lockup that broadcast those proceedings, and he would be brought into the courtroom to examine witnesses. Appellant indicated he was the attorney in the case and he did not need to be placed in lockup. The court indicated that appellant was not acting like an attorney, but appellant replied that the court was not acting like a court. Appellant continued to interrupt, and argue with, the court. The court later asked appellant to behave and indicated that, if appellant did not, he would have to monitor proceedings from the lockup and be brought out to examine witnesses.

On March 21, 2003, appellant was given an opportunity to present an opening statement, but he instead attempted to present jury argument. Appellant failed to heed the court's repeated warnings that jury argument at that time was improper. The court later told appellant it sounded like appellant did not have an opening statement, and that the

court was not going to "play [appellant's] game." The court later deemed appellant to have reserved his opening statement. The People presented their case-in-chief and appellant cross-examined the People's witnesses.

Appellant did not later make an opening statement. During the defense presentation of evidence, appellant presented two witnesses, and later began direct examination of a third, his wife, Harriett Smith.

The next court day, March 27, 2003, proceedings resumed. Appellant was quietly singing. The court told appellant to conduct himself appropriately. Appellant had come to court with only a blank legal pad and a pencil. Smith took the witness stand so appellant could resume direct examination.

However, appellant instead repeatedly asked Smith if she knew he loved her. Appellant then stated, "And I told you before -- before I let them take me back to state prison, I'd kill myself . . . ." Appellant then faked a suicide attempt, using the eraser end of a short pencil to pretend to slash at his wrists. The bailiff forced appellant to the floor, and other deputies were summoned. The jury was ordered out of the courtroom.

Later, outside the presence of the jury, the court indicated that appellant was not in the courtroom, and appellant was refusing to exit the lockup. The court also indicated that appellant could monitor courtroom proceedings from the lockup. The court described appellant's faked suicide attempt. Based on appellant's disruptive conduct throughout the trial and the faked suicide attempt, the court granted the sheriff's request that appellant be placed in restraints during the rest of the trial.

The court stated that it wanted to continue with proceedings, but that appellant did not want to enter the courtroom. The court asked the bailiff to confirm that the bailiff had asked appellant to exit his cell, and that appellant was refusing to speak or move. The bailiff replied in the affirmative. The bailiff indicated he had tried to speak with appellant for the last hour and a half, but appellant had refused to acknowledge the bailiff's presence. In particular, when the bailiff nonforcibly rolled appellant over in the lockup, appellant looked at the bailiff, closed his eyes, lay down, and refused to talk with the bailiff.

The court indicated that appellant was monitoring the proceedings, and the court told the bailiff to return to appellant once more to see if appellant wanted to be present during trial. The court indicated that, otherwise, the court was going to find that appellant voluntarily had absented himself from trial. The court observed that appellant had been disruptive since the beginning of trial, and the court indicated that the trial would continue absent appellant after the bailiff asked appellant once more if he wanted to be present.

The bailiff went to appellant, returned, and indicated the following to the court. The bailiff had asked appellant, but appellant had refused to talk with the bailiff. Appellant walked towards the cell door as if he had wanted to exit, but the bailiff did not know why appellant was doing so, and appellant continued to look down and not answer the bailiff. The bailiff, for security reasons, did not want to open the cell door absent an answer from appellant, and the bailiff construed appellant's conduct as unwillingness to return to the courtroom.

The court noted that appellant was monitoring proceedings, and that the court was not going to have the cell door opened and appellant brought into the courtroom unless appellant answered the bailiff. The court stated, "the reason is, I think he's playing more of his games and theatrics and he wants the cell door opened so he can get in a fight with the sheriffs so that he can get injured and be taken away and have this trial not continue." The court indicated that unless appellant said he wanted to come to trial, the court would not allow him to exit the lockup. The court told the bailiff to give appellant one more chance to answer, and then proceedings would resume.

The bailiff later returned to court a third time and indicated there had been no change in appellant's conduct. The bailiff told the court that appellant was standing by the door and refusing to answer the bailiff. The court stated, "I take that as [appellant's] voluntarily absenting himself from the trial, continuing his theatrics and continuing being a disruptive defendant, so we will continue in his absence." The court indicated that if, at any point, appellant told the bailiff that appellant wanted to be present at trial, the court would have appellant brought into the courtroom.

When trial resumed, the court explained that appellant was in the lockup, he could monitor the courtroom proceedings from the lockup, and he had elected not to enter the courtroom. The court told Smith and the jury that appellant had faked the suicide attempt and had not injured himself. The court also indicated that appellant was voluntarily absenting himself from the proceedings, but the proceedings would go forward.

The prosecutor subsequently cross-examined Smith. The court told the bailiff to ask appellant if he wanted to enter the courtroom and conduct redirect examination. The jury exited the courtroom. The bailiff spoke with appellant, then returned. The bailiff told the court that appellant told the bailiff that appellant wanted to return to the courtroom, but when deputies began positioning appellant in a chair which they planned to use to bring him into the courtroom, appellant began resisting and the deputies had to subdue him. The deputies' sergeant had decided that, for security reasons, appellant would not be brought into the courtroom. The court found that appellant voluntarily had absented himself again. When the jury returned, the court told the jury that appellant did not want to enter the courtroom, and Smith had finished her testimony.

On March 28, 2003, proceedings resumed and appellant was not in court. The court, outside the presence of the jury, stated, "I did receive information from the jail today that on his way out of court yesterday [appellant] got in a confrontation with the deputies and he was assigned to the jail ward, medical ward, where he was examined by doctors. [¶] [Appellant] will not come to court this morning. He indicates that his back was injured and he can't sit in a wheelchair and he can't sit in court. [¶] However, [appellant] has been examined by doctors at the jail ward who indicate that he is able to be transported to court, he is physically able to walk, and he is able to sit in a chair. [¶] [Appellant] is again playing games with the court. He is able to be here. He is refusing to come to court. This is his second day now that he is refusing to come to the courtroom. [¶] Yesterday he didn't want to come from the lockup into the courtroom. Today he doesn't want to come from the county jail to the courtroom. [¶] And it's more

of his games and I find again, as I did yesterday, that he has voluntarily absented himself from the proceedings."[2]

The court admitted in evidence various defense exhibits and, when the jury later entered the courtroom, the court told the jury that appellant again voluntarily had absented himself from the proceedings. The prosecutor presented his closing argument to the jury. The court later supplemented the record with comments concerning appellant's disruptive conduct.[3] Proceedings continued. Appellant was present in the courtroom when, on April 1, 2003, the verdicts were read and appellant was convicted as previously indicated.

Appellant later, represented by counsel, filed a motion for a new trial. In the written motion, appellant conceded he improperly disrupted trial on March 27, 2003, by "attempting suicide with a pencil." However, appellant urged that he had been involuntarily excluded from the courtroom on March 28, 2003 (the day he refused to come to the courthouse). Appellant claimed that, although he had been "physically

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[2] The court indicated it would include in the court file an e-mail, sent by the jail sergeant to the court's bailiff, that corroborated the court's comments.

[3] The court stated, "Just to supplement the record, I do want the record to reflect that [appellant] in this matter has been disruptive throughout this trial, from the very first day when he told me he would not follow the court order regarding discussing sentencing with the jury all the way through the end of trial with his games and theatrics that occurred every day." After discussing the faked suicide attempt, the court stated, "Then the defendant refused to come out of his cell and refused to come in the courtroom. I knew and even stated at that time that [appellant] was looking for the deputies to try and bring him to court so that he could fight with the deputies to find another reason to fake injuries in the hope of obtaining a mistrial. [¶] [Appellant] did cause a fight with deputies yesterday, again for no reason. [Appellant] was examined for those injuries, or those claimed injuries, by the jail doctors. He has been x-rayed by jail doctors, and the x-rays have been reviewed by the jail doctors. [¶] There is no reason, according to the doctors, why [appellant] cannot be in court today. In fact, I have been advised that [appellant] has been refusing to leave the jail hospital but the doctors have ordered him physically removed from the jail hospital because they find that he is not injured. [¶] . . . [¶] These are the pro per defendant's tactics. There is no doubt in my mind [appellant] is attempting to obtain a mistrial now that we are very near the end of this case. I believe he sees the writing on the wall."

cleared to attend court[]" by prison doctors, his mental status resulted in an involuntary commitment and a 72-hour hold that commenced on March 27, 2003, pursuant to Welfare and Institutions Code section 5150.[4]

In support of his claim, appellant attached to his written motion copies of a sheriff's department behavioral observation and mental health referral form, and a county emergency room record research and evaluation form. The former document reflected that, at 11:40 p.m. on March 27, 2003, a deputy saw appellant attempt to strangle himself with a makeshift noose. Appellant put it around his neck, and tied the other end to a gurney. He put pressure on the noose by sliding his body toward the foot of the bed. After a struggle, the deputy removed the noose. A doctor determined that appellant had not been injured. A doctor from psychiatric services placed appellant on a 72-hour hold. Appellant urged in his written motion that he was unable to attend court proceedings "relative to the [Welfare and Institutions Code section] 5150 hold[]" and his March 28, 2003 absence from court was involuntary.

At the hearing on the motion, appellant urged he had been involuntarily excluded from court on March 27, 2003. Appellant asserted that, when asked on March 27, 2003, if he wanted to exit the lockup and enter the courtroom, he had indicated that he wanted to "come out." Appellant also urged he had wanted to come to court on March 28, 2003, but was prevented from doing so by jail authorities. Appellant noted that, on the night of March 27, 2003, he had been placed on a 72-hour hold.

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[4] That section states, in relevant part, "When any person, as a result of mental disorder, is a danger to others, or to himself or herself, or gravely disabled, a peace officer, . . . may, upon probable cause, take, or cause to be taken, the person into custody and place him or her in a facility designated by the county and approved by the State Department of Mental Health as a facility for 72-hour treatment and evaluation. [¶] Such facility shall require an application in writing stating the circumstances under which the person's condition was called to the attention of the officer, . . . and stating that the officer, . . . has probable cause to believe that the person is, as a result of mental disorder, a danger to others, or to himself or herself, or gravely disabled." (Welf. & Inst. Code, § 5150.)

After argument, the court gave a detailed recitation of the events of March 27, and March 28, 2003. The court indicated that the March 27, 2003 faked suicide attempt was well planned, that appellant had brought no legal materials with him that day, and he had faked the suicide attempt after he had called Smith, his most important witness, to testify. The court also indicated that appellant faked the suicide attempt, not because of any mental aberration, but because he did not like the way things were going and wanted to create a mistrial. The court further indicated that appellant later feigned a desire to return to the courtroom so he could fight with deputies and create grounds for a mistrial.

As for appellant's March 28, 2003 refusal to come to the courthouse, the court indicated the following. The court and its bailiff had had several conversations with the sheriff's department in an effort to get appellant to the courtroom. Appellant had been "cleared by the jail doctors." The information provided to the court and its bailiff was that appellant had "refused to leave his bed. [Appellant] was informed that he was needed in court. He refused to respond and refused to get out of bed." Special arrangements had been made to enable appellant to be transported to court, including arrangements for him to be transported in a wheelchair, but appellant had refused to be transported.

The court also indicated as follows. Appellant had provided no documents indicating he had wanted to come to court but was denied that opportunity. Appellant refused to come to court even though the "[the bailiff] and [the court] did everything in our power to get [appellant] to court . . . but for his refusal." The court did not order appellant forcibly returned to the courthouse, because the court was concerned that, in light of appellant's repeated fights with deputies, they might be injured. There was no doubt in the court's mind "through the information that I received that [appellant] just did not want to come to court."

The court further indicated the following. Appellant had not provided any declaration from a psychologist or psychiatrist that there were reasons that appellant could not have come to court. The court had nothing from the sheriff's department indicating appellant had wanted to come to court. Appellant "played numerous games

with the court system in this case." Appellant was very manipulative and aggressive. The court was aware of nothing that indicated that a person under a 72-hour hold could not be transported to court. Appellant's exclusion from court on March 28, 2003, was "not involuntary but was his intended plan in the hopes of gaining a mistrial."

The court suggested the 72-hour hold might have been invalid,[5] and stated, "So I don't even know if there was officially a [Welfare and Institutions Code section] 5150 hold, but I know that the sheriff was prepared to bring [appellant] to court and I believe he could have on the [Welfare and Institutions Code section] 5150 hold. [¶] The motion for a new trial is respectfully denied."[6]

2. *Analysis.*

Appellant claims that "Appellant, acting in pro per, was not permitted to complete direct examination of an important witness, was not permitted to present a complete defense and was not permitted to hear respondent's closing argument nor present closing argument on his own behalf. Appellant was thereby deprived of his right to counsel and to due process and a fair trial as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution. As such, the judgment must be reversed and the matter remanded for a new trial." We disagree.

In a similar case, *People v. Parento* (1991) 235 Cal.App.3d 1378, the court stated, "The present case, . . . does not involve the involuntary removal of a defendant from the courtroom. The issue, therefore, is not whether there was a violation of [the defendant's] right to be present at trial, or of his right to counsel, but whether [he] was entitled to waive those rights. There is little question but that he was. [¶] Thus, it is well settled that a defendant for an offense not punishable by death is entitled to absent himself from the proceedings [citations]. Further, it is settled that the right of a defendant to represent

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5 The court stated, "I'm also not sure, although I don't think it really matters, pursuant to [Welfare and Institutions Code section] 5150 I don't see that there was ever prepared an application in writing as required by statute."

6 Although appellant, in his opening brief, refers to his showing in his motion for a new trial, he does not expressly claim that the denial of that motion was error.

himself includes the right to decline to conduct any defense whatsoever. 'The choice of self-representation preserves for the defendant the option of conducting his defense by nonparticipation. [Citation.] . . . Where a defendant has chosen to represent himself, . . . he is entitled to conduct that defense in any manner he wishes short of disrupting the proceedings, and thus is free to absent himself physically from trial. If, as here, that choice was voluntary, it will be respected. It follows that a defendant who has exercised his right of self-representation by absenting himself from the proceedings, may not later claim error resulting from that exercise." (*People v. Parento*, *supra*, 235 Cal.App.3d at pp. 1381-1382.)

We have recited above the pertinent facts. They amply demonstrate a disruptive and manipulative defendant, but also a defendant who, representing himself, voluntarily absented himself from trial after his faked suicide attempt but before the verdicts were read. That is, during that period, and thus during the proceedings with respect to which appellant complains his constitutional rights were violated, he merely exercised his right of self-representation by voluntarily absenting himself from the proceedings. No violation of appellant's right to counsel, right to due process, or right to a fair trial occurred. (Cf. *People v. Parento*, *supra*, 235 Cal.App.3d at pp. 1381-1382; see *People v. Gutierrez* (2003) 29 Cal.4th 1196, 1202-1209.) None of the cases cited by appellant compels a contrary conclusion.

DISPOSITION

The judgment is affirmed.

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CROSKEY, J.

We concur:

KLEIN, P.J.

ALDRICH, J.